



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Health and Wellness	Department Contact	Gwendolyn Nixon
Contact Email	gwendolyn.nixon@louisvilleky.gov	Contact Phone	(502) 574-6540

Contract Type: check one	<input checked="" type="checkbox"/> New	<input type="checkbox"/> Amendment		
		Additional Funds	Time Extension	Scope
Professional Service				
Sole Source (goods/services)	<input checked="" type="checkbox"/>			
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	11/01/2016	06/30/2016		

VENDOR INFORMATION

Vendor Legal Name	Cepheid US				
DBA					
Point of Contact	Kim Kincaid	Email	Kim.Kincaid@cepheid.com		
Street	904 Caribbean Dr				
Suite/Floor/Apt		Phone	888-838-3222		
City	Sunnyvale	State	CA	Zip Code	94089
Federal Tax ID#		SSN# (If sole proprietor)			
Louisville Revenue Commission Account #					
<u>Human Relations Commission Certified Vendors</u>	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business		
Select if applicable					

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$40,000		(including reimbursement expenses, if applicable)		
Fund Source: General Fund	<input checked="" type="checkbox"/>				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	605	4130	411401	531408
Payment Rate	per hour		per day		per service
	per month		Other		
Payment Frequency	Monthly	<input checked="" type="checkbox"/>	Upon Completion / Delivery		
	Quarterly		Other		



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CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)

Amendments: Describe the circumstances under which a time extension or scope change is needed.

New: Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

The LMPHW Laboratory purchased the Cepheid GeneXpert nested PCR instrument used to test sputum samples for the presence of M. tuberculosis (MTB) as well as Rifampin (RIF) resistance in May 2012 to support the department's regional tuberculosis (TB) clinic with the diagnosis and management of its patients. By bringing this test in house, we would be able to get the results to the TB clinic in a more timely manner than referring the samples to the Division of Laboratory Services in Frankfort, KY. We purchased a 2-module instrument with the capability of being upgraded to a 4-module instrument, if needed.

We have found that in order to keep our commitment to report MTB results in a timely manner and meet our LouieStat goal for internal turnaround time, we need to increase the capacity of the instrument from 2-modules to 4- modules. Also included in this contract would be the consumables needed to perform this test, which include the Cepheid MTB/RIF all-in-one reagent test kit, and the calibration kit used to calibrate the instrument annually.

JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

See attached sole source letter and quote for the module upgrade.

AUTHORIZATIONS: Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director *[Signature]* Date 10/17/14
 Signature _____
 Printed Name *[Name]*

Purchasing Director *[Signature]* Date 10/31/14
 Signature _____
 Joel Neaveill



October 11, 2016

Gwendolyn Janine Nixon - Laboratory Technical and General Supervisor
Louisville Metro Public Health & Wellness Laboratory – Provide, Prevent, Protect
430 East Gray
Louisville, KY 40202
Phone: (502) 574-6540
Fax: (502) 574-6614

Dear Gwendolyn Janine Nixon,

Cepheid is the original and sole manufacturer of the GXMTB/RIF-US-10 reagent product within the United States. Also, Cepheid's GeneXpert modules are manufactured exclusively for Cepheid according to Cepheid's specifications. Cepheid is also the sole authorized distributor of the GeneXpert modules and GXMTB/RIF-US-10 reagent product to Louisville Metro Public Health & Wellness Laboratory – Provide, Prevent, Protect 430 East Gray, Louisville, KY 40202.

Warm Regards,

A handwritten signature in black ink, appearing to read "Hung (Josh) K. Tran".

Hung (Josh) K. Tran
Cepheid
Commercial Attorney
408-400-4475
josh.tran@cepheid.com

AGREEMENT FOR SOLE SOURCE PURCHASE

THIS CONTRACT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE METRO DEPARTMENT OF PUBLIC HEALTH AND WELLNESS**, herein referred to as “**METRO GOVERNMENT**”, and **CEPHEID** with offices located at 904 Caribbean Drive, Sunnyvale, California 94089, herein referred to as “**CONTRACTOR**”.

WITNESSETH:

WHEREAS, the Metro Government wishes to purchase an upgrade of an instrument owned by LMPHW used to test for tuberculosis and Rifampin resistance; and

WHEREAS, the Contractor has been determined by the Metro Government to be a sole source to provide same,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

I. SCOPE OF SERVICES

A. Contractor shall, at the request of the Metro Government, provide services under the terms of this Agreement.

B. The services of Contractor shall include but not be limited to the following:

1. Those described on Attachment A attached hereto and fully incorporated herein. In the event of a conflict between this Agreement and Attachment A (including but not limited to Contractor’s “Cepheid Terms and Conditions” found at www.cepheid.com/ordermanagement), the terms of this Agreement shall control.

II. FEES AND COMPENSATION

A. The Metro Government shall pay Contractor for services rendered pursuant to and as described in Attachment A. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **FORTY THOUSAND DOLLARS (\$40,000.00)**.

B. Payment shall be made pursuant to Attachment A.

C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

III. DURATION

A. This Agreement shall begin November 1, 2016 and shall continue through and including June 30, 2017.

B. This Agreement may be terminated by submitting ninety (90) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

IV. RECORDS-AUDIT

Contractor shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Contractor's costs which are chargeable to the Metro Government under this

Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Contractor's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

V. INSURANCE REQUIREMENTS

Insurance coverage shall be required of Contractor in accordance with Attachment B attached hereto.

VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

Contractor agrees to indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's subcontractors if any) performance or breach of the contract provided that such claim, damage, loss, or expense is attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or breach of contract, or the negligent act or omission, but only to the extent that any such claim, damage, loss or expense is not

attributable to the negligent act or omission, or willful misconduct of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

VII. REPORTING OF INCOME

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

VIII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

IX. AUTHORITY

The Contractor, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

X. CONFLICTS OF INTEREST

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or

agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

XII. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise,

inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, this Agreement shall govern.

XIII. SUCCESSORS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

XIV. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

XV. COUNTERPARTS

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

XVI. CALCULATION OF TIME Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Contractor is

directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

XVII. CAPTIONS The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.


XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND
LEGALITY:

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT



MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY


JOEL NEAVEILL, DIRECTOR, PURCHASING
DEPARTMENT

Date: 11/29/16

Date: 11/29/16

DEPARTMENT OF PUBLIC HEALTH
AND WELLNESS


DR. JOANN SCHULTE, DO, MPH
DIRECTOR, DEPARTMENT OF
PUBLIC HEALTH AND WELLNESS

Date: 11/28/16

CEPHEID

By: Michael Prodanovich

Title: Contracts Manager

Date: November 11, 2016

Taxpayer Identification No.
(TIN): _____

Louisville/Jefferson County
Revenue Commission Account
No.: _____

ATTACHMENT A



Sales Quote

Cepheid US
 904 Caribbean Dr
 Sunnyvale CA. 94089
 USA

Phone 888-838-3222
 Fax 408-734-1346

Quote Number 20015667

Quote Date 09/21/2016

Quote Expire 10/31/2016

Print Date 09/21/2016

Contact ordermanagement@cepheid.com

Sold To 1000001845 Louisville Metro Dept. of Public Hea 400 E Gray Street Louisville KY 40202-1740 USA	Ship To 1000001845 Louisville Metro Dept. of Public Hea 400 E Gray Street Louisville KY 40202-1740 USA
Buyer Phone	Phone 502-574-3211

Attention: Gwen Gray Phone: 502-574-6540
 Sales Rep: Kim Kincaid GPO: GSA

Line	Item Number	Due Date	Required Date	Qty	UDM	Unit Price	Discount	Net Price	Extended Price
10	GXSINGLEADD	09/21/2016	09/23/2016	1.000	EA	10,000.00	0.00	10,000.00	10,000.00
	GENEXPERT SIX COLOR SINGLE MODULE ADD-ON								
20	GXSINGLEADD	09/21/2016	09/23/2016	1.000	EA	10,000.00	0.00	10,000.00	10,000.00
	GENEXPERT SIX COLOR SINGLE MODULE ADD-ON EXISISTING SERIAL NUMBER 801990 PART NUMBER GX4-2-D								

YOUR PURCHASE ORDER MUST REFERENCE THIS QUOTE#20015667 TO RECEIVE THE ABOVE DISCOUNTS. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT.

Standard orders ship via FedEx 2-Day. Quoted freight charge is an estimate only and final charges will be prepaid and added to invoice.

Customer's preferred carrier and account number are required if shipped collect

Cepheid T&Cs shall apply to any PO issued by the customer and may be found at www.cepheid.com/ordermanagement.

ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE.

Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to ordermanagement@cepheid.com

Includes 12 month warranty



Subtotal	20,000.00
Shipping & Handling	200.00
Total USD	20,200.00

GPO
IDN
Payment Terms
Freight Terms
FOB Point
Ship Via

GSA/FSS
APHL
Net 30 Days
PPA
ORIGIN
FEDEX 2DAY (3:00 PM SECOND
BUSINESS

Salesperson 6000000043
Salesperson 6000000022



Sales Quote

Cepheid US
 904 Caribbean Dr
 Sunnyvale CA 94089
 USA

Phone 888-838-3222
 Fax 408-734-1346

Quote Number 20016777

Quote Date 10/25/2016

Quote Expire 11/30/2016

Print Date 10/25/2016

Contact ordermanagement@cepheid.com

Sold To 1000001845 Louisville Metro Dept. of Public Hea 400 E Gray Street Louisville KY 40202-1740 USA	Ship To 1000001845 Louisville Metro Dept. of Public Hea 400 E Gray Street Louisville KY 40202-1740 USA
Buyer Phone	Phone 502-574-3211

Attention: Gwen Nixon
 Sales Rep: Kim Kincaid

Phone: 502-574-6540
 GPO: NON-DES GOV

Line	Item Number	Due Date	Required Date	Qty	UOM	Unit Price	Discount	Net Price	Extended Price
10	GXMTB/RIF-US-10 KIT.MTB,IVD,US	10/25/2016	10/27/2016	1.000	EA	700.00	105.00-	595.00	595.00
20	XPERTCHECK- US-5 KIT,XPERTCHECK,US	10/25/2016	10/27/2016	1.000	EA	1,500.00	0.00	1,500.00	1,500.00

YOUR PURCHASE ORDER MUST REFERENCE THIS QUOTE#20016777 TO RECEIVE THE ABOVE DISCOUNTS. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT.

Standard orders ship via FedEx 2-Day. Quoted freight charge is an estimate only and final charges will be prepaid and added to invoice.

Customer's preferred carrier and account number are required if shipped collect.

Cepheid T&Cs shall apply to any PO issued by the customer and may be found at www.cepheid.com/ordermanagement. ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE.

Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to ordermanagement@cepheid.com



Subtotal	2,095.00
Shipping & Handling	97.75
Total USD	2,192.75

GPO
IDN
Payment Terms
Freight Terms
FOB Point
Ship Via

Non-Des Gov
PHL
Net 30 Days
PPA
Origin
FEDEX 2DAY (3:00 PM SECOND
BUSINESS

Salesperson	6000000043
Salesperson	6000000022

ATTACHMENT B

I. **INSURANCE REQUIREMENTS**

Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to **Louisville/Jefferson County Metro Government's Purchasing Division** and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. Contractor shall not allow any subcontractors to commence work until the insurance required of such subcontractors has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). Metro may require Contractor to supply proof of subcontractors insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

A. **The following clause shall be added to Contractor's (and approved subcontractors) Commercial General Liability Policies:**

1. **"The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."**

B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on Contractor's or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY**, via the **Occurrence Form**, primary, non contributory, with a **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury, Property Damage, and Products/Completed Operations including:

- a. Products and Completed operations liability coverage shall be on a claims basis not to exceed \$2,000,000.00 per claim.
- b. Premises - Operations Coverage
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Personal Injury

2. **WORKERS' COMPENSATION (IF APPLICABLE)** insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY - \$100,000** Each Accident/**\$500,000** Disease - Policy Limit/**\$100,000** Disease - Each Employee.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

MISCELLANEOUS

- A. Contractor shall procure and maintain insurance policies as described herein and for which the **Louisville/Jefferson County Metro Government's Purchasing Division** shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro at least fifteen (15) days prior to the expiration of any policy(s).

- B. **Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Purchasing Division
611 West Jefferson Street
Louisville, Kentucky 40202

- C. **Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

- D. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro's Risk Management Division within two (2) business days. If Contractor fails to notify Metro as required by this Agreement, Contractor agrees that such**

failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.

- E. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Contractor hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Contractor.